

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1012 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge?
No.

KAVABHAI GALJIBHAI

Versus

STATE OF GUJ

Appearance:

MR YASHWANT S BAROT for Petitioner
MR N.D. GOHIL, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 11/03/98

ORAL JUDGEMENT

Appellant - Kavabhai Geljibhai stood charged for the offence punishable u/s 302-452 of the I.P. Code ('IPC' for short) in Sessions Case No. 167 of 1993 by the learned Additional Sessions Judge, Ahmedabad (Rural), at Ahmedabad on the following brief facts.

2. Complainant Kodarbhai Dhulaji and accused Kavabhai Gelajibhai were residing in the same locality at Gandhinagar. They were also doing labour work of distributing gas cylinders to the consumers. They were living in the vicinity of each other. Since the complainant Kodarbhai Dhulaji saw accused Kavabhai Gelaji looking at his wife with suspicious expression he had scolded the accused about a couple of days before the date of incident namely 7th July, 1993. On 7-7-1993 the complainant had gone to the office of his employer Sheth Agency at about 8-00 O'clock in the morning when his brother-in-law Ramesh Gautam, Ramesh's brother Talshi Gautam as well as one Baldevbhai were attending the work of taking bills from the office. At about 8-00 O'clock in the morning there was uproar from the hut of the complainant, hence the complainant and his brother-in-law rushed to the hut of the complainant and the complainant found the accused coming out from the hut with a log of cot and throwing it on to the ground and running away. The complainant and other persons having entered into the hut found that the complainant's wife was screaming and she was bleeding from the head. On being asked what happened, the complainant's wife Maniben told him that Kavabhai (the accused) had hit her with a log of cot on her head and had run away. She immediately became unconscious. The complainant and other persons had taken her to the Civil Hospital, at Gandhinagar and after primary treatment there administered, she was advised to be taken to the Civil Hospital, Ahmedabad. When she was so taken the Doctor of Civil Hospital, Ahmedabad, examined her and declared her dead.

3. After carrying out investigation into the matter the charge sheet was submitted and ultimately the matter was committed to the Sessions Court where, upon conclusion of the trial and upon recording of the statement of the accused u/s 313 of the Cri. Pro. Code and after hearing learned advocates appearing for rival parties the learned Additional Sessions Judge recorded conviction of the accused u/s 304 Part II of the IPC and sentenced him to undergo rigorous imprisonment for a period of five years. He was also sentenced to undergo rigorous imprisonment for six months for the offence punishable u/s 452 of the IPC and to pay fine of Rs. 500/- i/d to undergo simple imprisonment for one month. The period undergone in the custody was permitted to be given set off. It is this judgment and order of conviction and sentence dated 16-9-1994 which has been challenged in this appeal.

4. At first it was submitted that the accused was

released upon completion of conviction of his sentence and therefore this appeal would not survive. After examining position of law referable to one of the decisions of the Apex Court in the case of R. Deenabandhu V. State of A.P. reported in A.I.R. 1977 SUPREME COURT 1335 saying that refusal to go into merits of conviction on the ground that sentence has been undergone or for any other such ground, cannot be countenanced as the appeal will have to be decided on merits. This appeal is accordingly heard before this Court.

5. The prosecution has adduced the evidence in the form of oral evidence of prosecution witnesses, Kodarbhai Dhulaji, complainant Exh.10, Dr. Rohitbhai Maneklal Shah Exh. 12, Sikanderbhai Bachubhai Exh. 15, Puspaben Vakshibhai Exh. 21, Abhesinh Ukhadesinh Exh. 22, Rameshchandra Gautamji Exh. 24, Manikant Labhshanker Shukla Exh. 26, Kishorgiri Himmatgiri Exh. 29, Dr. Deven Govindbhai Desai Exh. 30, Head Constable Nanjibhai Punjabhai Exh. 32 and Investigating Officer Vitthalbhai Shankerbhai Patel Exh. 34. The prosecution has also placed documentary evidence in the form of the complaint exh. 11, inquest panchanama exh. 27, panchanama of scene of offence exh. 16, letter addressed by the P.S.I. to the Civil Hospital, Ahmedabad Exh. 28, panchanama regarding clothes of deceased Maniben Exh. 8, panchanama regarding person of the accused exh. 9, P.M. Report exh. 31, Certificate regarding injuries sustained by deceased Maniben issued from General Hospital, Gandhinagar, Exh. 13, letter addressed by the Police Sub-Inspector to the Forensic Science Laboratory Exh. 36, Receipt of the letter sent to the Forensic Science Laboratory Exh. 37, forwarding letter of the Forensic Science Laboratory Exh. 38, Report of Forensic Science Laboratory Exh. 39, Serological Report Exh. 40, worthy (note of information) from General Hospital, Gandhinagar Exh. 33, worthy (note of information) exh. 23 issued from the Civil Hospital, Ahmedabad.

6. Mr. Barot learned advocate appearing for the appellant has gone through the evidence adduced by the witnesses before the Trial Court. He has also made reference to the case papers and the injury certificate. He has finally referred to the evidence with regard to how the accused came to be apprehended. From the evidence which has been read by Mr. Barot it has first been submitted that the prosecution has failed to examine independent witnesses and the witnesses who have been examined in this case are interested or acquainted or connected or related with the complainant. It is next

submitted by Mr. Barot learned advocate for the appellant that there is conflict between what has been recorded in the case papers and what has been recorded in the respective worthies and F.I.R. It has finally been submitted by him that there is variation in the evidence of the witnesses with regard to how the accused was apprehended or caught hold-of.

7. In order to appreciate the submissions made on behalf of the accused it would be important to note what is flowing from the prosecution evidence as has been placed on record.

8. The facts stated above do find support from the evidence of the prosecution witnesses more particularly the complainant Kodarbhai Dhulaji exh. 10, witness Puspaben Vakshibhai Exh. 21 and witness Rameshchandra Gautamji Exh. 24. None of the witnesses could be said to have any enmity with the accused except that a couple of days before the incident the complainant had an occasion to scold the accused with regard to his conduct vis-a-vis complainant's wife Maniben. However, such small reason may not be a reason for falsely implicating a person with regard to the serious offence like homicide. Reference has been made to some minor variations from the evidence of these witnesses. But I am in agreement with the learned Additional Sessions Judge when he has while discussing the evidence of these witnesses come to the conclusion that the evidence of these witnesses is trustworthy and there was no reason for discarding the same. It might be noted that inquest panchanama would indicate lying of the log of cot nearby the hut in question. Blood stained mattress is also noticed from the hut of the complainant and the injuries noted by the Doctor in the certificate would lend support to the prosecution case with regard to homicidal death of deceased Maniben. It would be interesting and important to note that before becoming unconscious Maniben had disclosed the fact that Kavabhai (accused herein) had hit her on her forehead with a log of cot. All three witnesses have testified this statement of deceased Maniben which was made by her soon before she became unconscious. This would corroborate the say of the complainant that he had seen the accused coming out of the hut with a log of cot in his hand and running away while throwing the log of cot just nearby his hut. All these facts clearly flow from the prosecution evidence and there is no circumstance which would go to exonerate the accused from all these circumstances.

9. It is no doubt true that there is mention about

deceased Maniben having been hit by some mad man on her forehead. However, it does not appear from the evidence of any of the witnesses that such an information was given by such witnesses as were informed by Maniben that she was hit by Kavabhai (accused herein) on her forehead. It is possible that some persons might have accompanied Gandhinagar Civil Hospital and the persons knowingly or unknowingly might have given the information to the person writing the case papers about assault by a mad man or by a man who was described to be a mad man in the context of the assault.

10. As a matter of fact, learned Additional Sessions Judge has discussed at length the worthy exh. 33, F.I.R. Exh.11 and second worthy Exh. 23. All these documents clearly go to indicate that there was assault by the accused. The only variation was with regard to one of the informations making a note about a brick over and above a log of cot. It is possible that brick might be lying in or nearby the hut in question. That does not take the defence any further. The fact that the accused was coming out of the hut with a log of cot and the fact that deceased Maniben had disclosed before becoming unconscious that the accused had hit a log of wood on her forehead would clearly indicate that for some reasons the accused assaulted deceased Maniben and after giving blow of a log of wood he must have come out of the hut. The incident has occurred at about 8-00 O'clock in the morning. Therefore, the statement appearing in the case papers with regard to assault by some mad man will not take the matter any further. As a matter of fact, on comparison of the contemporaneous document namely exh. 33 it would clearly appear that at the most the prosecution did disclose the facts with regard to deadly assault having been committed by the accused at the earliest point of time. The medical certificate concerning the injuries issued from the Civil Hospital, Gandhinagar exh. 13 indicates the only history of assault on head. The history recorded in the case papers exh. 14 has some variation while noting assault by some mad man. In view of the evidence of the prosecution witnesses noted above and in view of the documentary evidence in the form of exh. 33 and exh. 23, mention about assault by some mad man in the case papers exh. 14 does not assume such importance as would dislodge the prosecution case.

11. It has finally been submitted that a doubt does arise from the variation in the evidence of the concerned witnesses with regard to the manner in which the accused was caught hold-of or apprehended. It is not doubt true

that there is evidence about some people catching hold-of the accused soon after the incident and ultimately the accused having been kept in the house of Khemraj whereas there is evidence regarding the fact with regard to the accused having been kept in the godown of Gas Agency. As against this, the Police Constable arrested the accused at about 6-00 O'clock in the evening nearby the power house which is a place at a distance of 3 k.m. from the place of the incident. There is no exact and continued narration of the movement of the accused from the time when he was caught hold of by the people. Under such circumstances, the time gap between the constable arresting the accused and the people apprehending or catching hold of the accused would assume importance and that would displace the argument of the learned advocate for the appellant in respect of the variation regarding the manner in which the accused was caught hold of by the people and ultimately apprehended.

12. Having gone through the evidence adduced before the learned Additional Sessions Judge and having gone through the judgment and order of the conviction and sentence coupled with the reasons assigned by the learned Additional Sessions Judge, I am of the opinion that there is no error in appreciation of the evidence committed by the learned Additional Sessions Judge. In the facts and circumstances of the case, therefore, conviction and sentence recorded by the learned Additional Sessions Judge deserves to be confirmed. Following order is passed.

This appeal is dismissed.

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